

special
collections
DOUGLAS
Library



QUEEN'S UNIVERSITY
AT KINGSTON

KINGSTON ONTARIO CANADA

From the Author
REFORM

WITHOUT INNOVATION;

OR,

CURSORY THOUGHTS

ON THE

ONLY PRACTICABLE

REFORM OF PARLIAMENT,

CONSISTENT

WITH THE EXISTING LAWS,

AND THE

SPIRIT OF THE CONSTITUTION.

LONDON:

PRINTED BY WILLIAM SAVAGE, BEDFORD BURY.

1810.

11. 91. 80. 591

REFORM WITHOUT INNOVATION.

THE public mind being at this moment greatly agitated, on account of certain abuses, generally understood to have taken place in the administration of certain departments of the state, it has been thence concluded, that a considerable portion, not to say the whole, of the evils complained of, has arisen from a defective representation of the democracy in the lower House of Parliament; and a general outcry has been consequently raised, in almost every part of the kingdom, for such a reform in that representative body, as shall bring it as nearly as possible to, what is termed, the true and genuine Spirit of the British Constitution. To this end various discordant

and impracticable plans have been at different periods proposed, most, if not all, of them, deemed by the more sober and enlightened part of the community completely wild and visionary; unadapted, as well to the present condition of things, as to the existing circumstances of the times; and so far from being applicable to the remedy of any abuses, supposed to exist, as demonstrably to bring with them much greater mischiefs than those they are proposed to remove. One speculator in this line, is for universal suffrage; so that every male, from a certain age upwards, shall have a voice at the election of his department: another, is for the opening of all boroughs generally, not only to their residents, but their neighbourhood within certain limits; or without any limits at all, but those of the county in which such boroughs chance to be situated: another, for doing away the boroughs altogether; and transferring the elective rights to the counties at large, &c. &c. In a word, to detail all the plans, of all the different projectors

on this subject, would alone occupy a volume of no inconsiderable magnitude ; suffice it therefore to say, that they all appear, to the cool and reflecting mind, rash and impracticable in the extreme ; and not a single one of them more likely to suit the fancies of the other reformers, who, although looking to the same professed end, are yet eager to proceed to it by far different routes, than the present existing state of things, under all its pretended circumstances of abuse and mismanagement. With respect to the supposed corruption of Parliament, partly attributed to the influence of the crown, and partly to the borough system, an unprejudiced and considerate man would naturally say, first ascertain the facts on which you found your conclusions, and do not lay down premises which may be afterwards demonstrated to be fallacious, and then argue from them as if they were proved. Let it be in the first place considered, that the crown having the disposal of an immense revenue, dispersed through every department of the state,

must necessarily, and in the very nature of things, have a considerable influence over those departments, in all their several branches : and in what manner, if it be deemed an evil, such evil can be remedied, must remain with the proposers of reform to suggest. Would they annihilate the revenue and resources altogether ? or throw the direction of them into the hands of the aristocracy, or democracy ? or how else would they dispose of them ? Within no very long space of time, restrictions have been laid upon the royal prerogative, and various descriptions of people disfranchised of their rights, either to sit in Parliament, or to give their voices for representatives in it, on account of their supposed connection with the immediate servants of the crown ; and had not the increased revenues of the state occasioned a proportional increase in the number of those employed in their collection, as well as of those through whom such revenues are dispensed, the crown had at this moment possessed little, if any influence at

all ; none at least in any degree adequate to the demands of strictly constitutional necessity. For it should be considered, that without a certain portion of influence on the part of the crown, the public business could not be carried on, probably for a single day ; but the state engine, with all its nice and complicated machinery, would fall into confusion at once.

With regard to the Borough system, it seems the natural and necessary consequence of the ordinary progress of human affairs, that certain parts of a great community should mount in the scale of population and opulence, whilst others proportionally sink in it ; and if every city, town, and borough, in the kingdom, were to have their chartered and representative rights done away, the moment their commerce, their manufactures, or other sources of population and opulence began to decay, there would be no end to such changes in the municipal bodies of the state ; as they must in that case be for ever necessarily varying, accord-

ing to the ever varying condition of the different parts. Independently of these considerations, which cannot fail to have their weight with every thinking man, is it reasonable to suppose, that an assembly, so constituted as the lower House of Parliament now is, would submit, without the compulsions of external force, to any such extraordinary modes of reform, as either of those above alluded to, by which one moiety of its members, at the least, would be immediately deprived of their seats, and with them of the greater part of their personal consequence ; and the other moiety be rendered the absolute slaves of a wild democracy, without a power of judging, or acting, for themselves ; but be compelled, like puppets, to play such parts in the political drama, as from week to week, and from day to day, should be arbitrarily assigned to them by their constituents? Let any reflecting mind be turned for one moment to this view of the subject, and the total impracticability of such a measure, without

such others of external compulsion as should tend to overturn every part of the existing constitution, must be sufficiently apparent to render all other statements, and all other arguments on the subject, unnecessary. What then, it will be said, remains to be done, or attempted, with any probability of success? Various abuses are supposed to have been discovered, which demand a remedy, and if those who have been guilty of them will not apply it, either the people must take the power into their own hands, or some conciliatory measures be adopted by those who possess that power, calculated to ameliorate future prospects, and to afford a sort of earnest to the people, that the unauthorized commission of such supposed abuses will hereafter be provided against. This, in the humble opinion of the writer, is no otherwise to be practically effected, than by rendering the lower House of Parliament as respectable as the spirit of the existing laws and constitution of the country will admit of, without abandoning first principles, or

exciting any violent convulsion in the state. And this every one must allow to be desirable in the highest degree, though how to be effected may not be so immediately apparent. The very short and simple plan, the writer has to propose, will, he humbly submits, untie the Gordian knot, and solve the difficulty at once ; not only without altering the spirit of a single existing law, but merely by a strict adherence to, and enforcement of, the genuine principles of those already in existence ; the spirit of which has been shamefully violated, equally to the evident dishonour of the representative, and the just dissatisfaction of the constituent bodies. A violation, by which in direct contradiction, or, at least, evasion, of one of the plainest, and most clearly expressed acts, which the legislature of this country ever framed, the lower House of Parliament, instead of being constituted of individuals, each and all of them possessing a certain defined stake in the great national interests, is become an asylum for men of ruined and desperate

fortunes, who seek their seats in it at any expense of honour, or money, or other means within their reach, for the purpose of sheltering themselves from the demands of their just creditors,* and of obtaining besides a chance for their share in the general scramble, according to their several measures of talent, or want of principle, which chance too seldom turns up a blank, if well supported by both those constituent parts. Perfectly aware that inviolability of person is absolutely essential to the freedom of Parliament, the writer would be one of the very last to propose its infringement in the most distant way ; so far indeed is any such infringement from his intention, that it would be the warmest wish of his heart, that every member should not only be free in his person (so far as is ne-

* An instance has recently occurred, where a party, actually in prison, procured himself to be elected, and thus obtained his emancipation and future protection, with that money which ought to have been applied in satisfaction of the demands of his Creditors.

cessary to the execution of his public functions), but be equally so in his thoughts and his actions, and alike respectable throughout, in his conduct, his character, and his situation. This the writer, upon the best founded conviction, not only believes, but knows may be done by a rigid adherence to the sense and spirit of the Qualification Acts, as they now stand—By the act of the 9th of Queen Anne, Chap. 5th it is, for the better preserving the freedom and constitution of Parliament, enacted, that “no person shall be capable to sit or vote as a member of the House of Commons, for any County, City, Borough, or Cinque Port, within that part of Great Britain called England, the Dominion of Wales, and Town of Berwick upon Tweed, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate, either in law or equity, to and for his own use and benefit, of or in lands, tenements, and hereditaments, over and above what will satisfy and clear all incumbrances that may

affect the same, lying or being within that part of Great Britain called England, the dominion of Wales, and town of Berwick upon Tweed, of the respective annual value hereafter limited, videlicet, the annual value of six hundred pounds, above reprises, for every knight of a shire ; and the annual value of three hundred pounds, above reprises, for every citizen, burgess, or baron of the Cinque Ports ; and that if any person, who shall be elected or returned to serve in any Parliament, as a knight of a shire, or as a citizen, burgess, or baron of the Cinque Ports, shall not, at the time of such election and return, be seized of, or entitled to such an estate, in lands, tenements or hereditaments, as for such knight, or for such citizen, burgess, or baron, respectively, is herein-before required or limited, such election and return shall be void."

In order the better to ensure the observance of the above statute, another act passed in the 33d of the late King, chap. 20, by which, after reciting the former act, it was enacted, that " in order to enforce and

render the said act more effectual, “every person, who shall be elected a member of the House of Commons, shall, before he presumes to vote in the House of Commons, or sit there during any debate in the said House of Commons, after their Speaker is chosen, produce and deliver in to the clerk of the said House, at the table in the middle of the said House, and whilst the House of Commons is there duly sitting, with their Speaker in the chair of the said House, a paper or account signed by every such member, containing the name or names of the parish, township or precinct, or of the several parishes, townships or precincts, and also of the county, or of the several counties, in which the lands, tenements, or hereditaments do lie, whereby he makes out his qualification, declaring the same to be of the annual value of six hundred pounds above reprises, if a knight of a shire; and of the annual value of three hundred pounds above reprises, if a citizen, burgess, or baron of the Cinque Ports; and shall also, at the same time, take and

subscribe the oath therein set forth to verify the fact."

By the second section of the last mentioned act, the election of persons presuming to act without being so qualified, is declared to be void. Now it should be observed, that the *quantum* of this qualification was fixed in times, when money, by its proportional scarcity, was in fact equal, in real value, to three or four times the same nominal amount in those we live in; so that a fair demand might perhaps be made by the people for its proportional increase; but as that would be attended with various difficulties, as to the precise ascertainment of the now proportional equivalent, the writer, whose sole object is to attain much, or at least as much as he thinks at all necessary, at the smallest possible expense, consents to wave that consideration altogether, and content himself simply with the spirit of the law as it now stands; the evasion of which is notoriously, and every day, practised without the smallest notice whatever. Men without a

single foot of land in the world, without a single guinea they can justly claim as their own, borrow qualifications as they purchase seats in Parliament, and frequently of the very same parties; the furnishing a qualification being made a specific part of the contract for the seat. Now to do away this evasion altogether, and render the representative at least as independent as he professes to be, and ought to be, the writer's proposal is, that every qualification, whether real, or borrowed, shall remain liable to the demands of the member's creditors, during the whole period of his sitting in Parliament; instead of its being lent, as is frequently the case at present, for four and twenty hours, for the mere temporary purpose of enabling the member to take his seat, and to be then returned to the real owner:—in other words, if a person really choose to accommodate a member with a qualification, let him do it at the peril of being liable to that member's debts. In order to avoid all possible inconvenience, respect-

ing doubtful or disputed demands, the writer proposes, that the claims of creditors should not attach, or become a lien upon the qualification, until a judgment shall have been actually recovered at law for the amount ; and that immediately after the recording of such judgment, the member should have three months time given him to furnish an additional, or new qualification ; so that he should *at all times possess a clear unincumbered qualification to the stipulated legal amount*, while he sits in Parliament ; and in default thereof, that his seat should become, ipso facto, and irrevocably vacated. By this simple measure, without any innovation on, or substantial alteration of, the existing laws, the end and object of those at present in force, for designating the qualifications of representatives would be preserved ; and every ruined, or much incumbered, individual, instead of seeking refuge from the claims of his fair creditors in the House of Commons, would, from the publicity of the measure, fly from it, as from “ plague, pestilence, and fa-

mine;" and the body at large thus purified become at once the most respectable, and the most respected too, of any that history has handed down to us in the annals of the world. Every player would then have a real stake in the political game, and not be liable to be driven, by personal distress, into measures injurious to his country, and dishonourable to himself. The writer is well aware, that so moderate and plain a mode of reform, as is here proposed, cannot hit the tastes of all alike. The Crown and Anchor reformers will probably, on the one hand, consider it as nothing; a mere drop in the ocean of corruption, which could neither purify its waters, or alter the course of its current; whilst the men of ruined and desperate fortunes, now basking in the sunshine of representative immunity, would proclaim it one of the most visionary, impracticable, and inefficient schemes, ever submitted to the consideration of the public. Visionary, however, and inefficient as it may appear, nothing can be more easy than its execution; and

nothing more certain and salutary than its effects. Without either altering or infringing the spirit of any existing law, the representative body would thus be at once purged of its most objectionable and destructive parts ; and new life and vigour, in consequence, be restored to what remains. Every individual, occupying a seat in the lower House of Parliament would then be, in circumstances, at least, of some independence : and whatever germs of corruption might be discoverable in him, must be co-existent with his natural frame and constitution ; and not derived from the circumstances of external situation. It will be asked, perhaps, how, in such times as the present, when the prices of every article, essential not only to the comforts, but even the necessities of life, have experienced so immoderate and disproportioned a rise, could the possession of a clear three hundred, or six hundred pounds a year, place a man beyond the reach of corrupt influence ? The answer is, that, though it might not do so wholly

(which probably might be the case), yet would it be well worth the experiment ; for surely one possessing either of those incomes, or the moiety, or even the quarter of them, “ *above reprises,*” would stand upon much more respectable ground than another, who does not possess any income at all, and is induced, *by that very circumstance,* to seek an asylum in Parliament from the just demands of his creditors. The former may prove, it is true, a very dishonourable and unworthy member of society ; but the latter, almost necessarily, is such before he would aspire to a seat in Parliament, on the grounds, and for the purpose, stated ; and should any spark of honour lurk latent in his frame, is liable to have it extinguished by the very first drop from the phial of temptation that is poured upon it. How many individuals do we not know under this degrading predicament ? How many disguised under the cloaks of patriotism, and pretended zeal for the rights of the people, who are themselves the greatest enemies

to those rights, by an equal disregard of their own honour, and the claims of those who have just demands on them? How many, on the other hand, become the most active and mischievous creatures of ministerial influence, from the same degrading and dishonourable motives? Were men, before they courted seats in Parliament, to place themselves in a clear and independent situation, and be enabled to enter that respectable assembly with erect countenances, and say, “We claim our seats here as chosen representatives of the people, to defend their rights, and maintain our own; here are our titles to that property, which constitutes our legal qualifications—assail them who may, we stand at all times on our defence, perfectly conscious that our failure involves the forfeiture of that situation, which we have been most ambitious of obtaining.”—How truly respectable would an assembly of such representatives render themselves, not merely in the eyes of their constituents, but of the world at large; and, what is more than all the

rest, in their own? Instead of being pointed at, as is now too frequently the case, with the finger of scorn, as substantially aliens from that community whose rights they are bound to protect; as fugitives from law and justice, under the shadow of privilege, and sheltering themselves under the meanest evasions, for the basest and most criminal of purposes, they would then become the true and fair representatives of the people who elected them, with no other bias to betray their trust, than what might be referred to the failings of our common nature, to the total eradication of which no human institutions can apply. Thus by a simple adherence to *the spirit of the existing laws*, which had their origin both in reason and expediency, and were never yet evaded even in letter, without the virtual *breach of a solemn oath*, would the supposed defects in the representative body be at once remedied, so far as the constitution permits, without a dereliction of rights, or principles, on the one hand; or a forcible invasion of them, on the

other. The representative would thus be rendered respectable ; and the constituent content, at least to all reasonable purposes, and to the full satisfaction of *every reasonable mind* : for he who expects that any plan could be formed, or hint suggested, that should equally meet the objects and wishes of all parties, would be just as weak as the countryman of Æsop, who attempted to adjust the management of his beast, conformably to the advice of every passenger ; and with as rational a hope, as to the ultimate result, as the other of Horace, who

“ Rusticus expectat dum defluat annis, at ille
 “ Labitur, et labetur in omne volubilis ævum.”

1000

1000

SIR FRANCIS BURDETT

TO

HIS CONSTITUENTS;

**DENYING THE POWER OF THE
HOUSE OF COMMONS TO
IMPRISON THE PEOPLE OF
ENGLAND.**

LONDON:

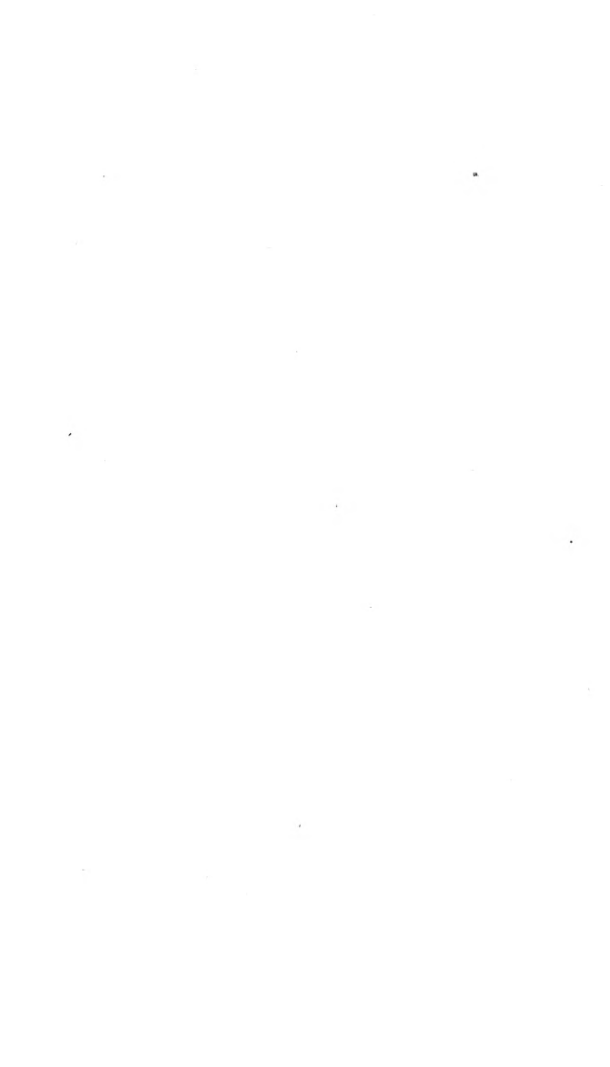
**PRINTED FOR R. BAGSHAW, BRYDGES STREET,
COVENT GARDEN ; AND J. BUDD, PALL MALL.**

1810.

Printed by T. C. HANSARD,
Peterboro' Court,
Fleet-street,
LONDON.

“ No Freeman shall be taken, or IMPRISONED, or be disseised of his Freehold, or Liberties, or Free Customs, or be out-lawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by *lawful judgment of his Peers*, or by the *Law of the Land*. We will sell to no man, we will not deny or defer to any man, either justice or Right.”——MAGNA CHARTA: Chapter XXXIX.

“ PERSONAL LIBERTY is a natural inherent right, which cannot be surrendered, or forfeited, unless by the commission of some great and atrocious crime, and which ought not to be abridged, in any case, *without the special permission of law*. A doctrine coëval with the first rudiments of the English Constitution, and handed down to us from our Saxon ancestors, notwithstanding all their struggles with the Danes, and the violence of the Norman Conquest: asserted afterwards, and confirmed by the Conqueror himself and his descendants: and, though sometimes a little impaired by the ferocity of the times, and the occasional despotism of jealous and usurping princes, yet established on the firmest basis by the provisions of Magna Charta, and a long succession of Statutes enacted under Edward III. To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society, and, in the end would destroy all civil liberty, by rendering its protection impossible: but the glory of the English Law consists in CLEARLY DEFINING the *times*, the *causes*, and the *extent*, when, *wherefore*, and to *what degree*, the imprisonment of the subject may be lawful.”——BLACKSTONE’S COMMENTARIES. Book III. Chap. 8.



SIR FRANCIS BURDETT

TO

HIS CONSTITUENTS,

&c. &c.

GENTLEMEN ;

THE House of Commons having passed a Vote, which amounts to a declaration, that an Order of theirs is to be of more weight than Magna Charta and the Laws of the Land, I think it my duty to lay my sentiments thereon before my Constituents, whose character as free-men, and even whose personal safety, depend, in so great a degree, upon the decision of this question—a question of no less importance than this : Whether our liberty be still to be secured by the laws of our fore-fathers, or be to lay at the absolute mercy of a part of our fellow-subjects, collected together by means which it is not necessary for me to describe.

In order to give to this subject all the attention to which it is entitled ; and to avoid the danger to be apprehended from partial views and personal feeling, it will be advisable to argue the question on its own merits, putting the individual (however we may deplore his present sufferings) out of view ; though at the

same time, every man ought to consider the case his own; because, should the principle, upon which the Gentlemen of the House of Commons have thought proper to act in this instance, be once admitted, it is impossible for any one to conjecture how soon he himself may be summoned from his dwelling, and be hurried, without trial, and without oath made against him, from the bosom of his family into the clutches of a jailor. It is, therefore, now the time to resist the doctrine upon which Mr. Jones has been sent to Newgate; or, it is high time to cease all pretensions to those Liberties which were acquired by our forefathers, after so many struggles and so many sacrifices.

Either the House of Commons is authorised to dispense with the Laws of the Land; or it is not. If the Constitution be of so delicate a texture, so weak a frame, so fragile a substance, that it is to be only spoken of in terms of admiration, and to be viewed merely as a piece of curious but unprofitable workmanship; if Magna Charter and all the wholesome Laws of England be a dead-letter: in that case, the affirmative of the proposition may be admitted; but, if the Constitution lives, and is applicable to its ends; namely, the happiness of the community, the perfect security of the life, liberty and property of each member and all the members of the society; then the affirmative of the proposition can never be admitted; then must we be

free-men; for we need no better security, no more powerful protection for our Rights and Liberties, than the Laws and Constitution. We seek for, and we need seek for, *nothing new*; we ask for no more than what our fore-fathers insisted upon as their own; we ask for no more than what they bequeathed unto us; we ask for no more than what they, in the Testament which some of them had sealed, and which the rest of them were ready to seal, with their blood, expressly declared to be "*the Birth-right of the People of England*;" namely, "THE LAWS OF ENGLAND". To these Laws we have a right to look, with confidence, for security: to these laws the individual now imprisoned has, through me, applied for redress, in vain. Those, who have imprisoned him, have refused to listen to my voice, weakly expressing the strong principles of the Law, the undeniable claims of this Englishman's "*Birth-right*." Your voice may come with more force; may command greater respect; and, I am not without hope, that it may prove irresistible, if it proclaim to this House of Commons, in the same tone as the tongues of our ancestors proclaimed to the Kings of old, "NOLUMUS LEGES ANGLIÆ MUTARI"; or, in our own more clear and not less forcible language; "THE LAWS OF ENGLAND SHALL NOT BE CHANGED."

The Principle, fellow-citizens, for which we are now contending, is the same Principle, for

which the people of England have contended from the earliest ages, and their glorious success in which contests are now upon record in the Great Charter of our Rights and Liberties, and in divers other subsequent Statutes of scarcely less importance. It was this same great Principle, which was again attacked by Charles the First. In the measure of Ship Money, when again the people of England and an uncorrupted House of Commons renewed the contest; a contest which ended in the Imprisonment, the Trial, the Condemnation, and the Execution of that ill-advised King. The self same Principle it was, that was so daringly violated by his Son James the Second; and for which violation he was compelled to flee from the just indignation of the people, who not only stript him of his Crown, but who prevented that Crown from descending to his family. In all these contests, the courage, perseverance, and fortitude of our ancestors, conspicuous as they were, were not more so than their wisdom; for, talk as long as we will about Rights, Liberties, Franchises, Privileges and Immunities, of what avail are any, or all of these together, if our Persons can, at the sole will and command of any man, or set of men, be seized on, thrown into prison, and there kept during the pleasure of that man, or set of men? If every one of you be liable, at any time, to be sent to jail without trial, and without oath made against you, and there to be detained as long as it pleases the parties

sending you there (perhaps to the end of your life), without any Court to appeal to, without any means of redress: if this be the case, shall we still boast of the Laws and of the Liberties of England? Volumes have been written by Foreigners as well as by our own countrymen in praise of that part of our Law, which in so admirable a manner, provides for our personal safety against any attacks of men in power. This has, indeed, been, in all ages, the pride of our country; and it is the maintenance of this principle which enabled us to escape that bondage, in which all the States and Kingdoms in Europe were enthralled by abandoning and yielding it up; and, we may be assured, that if we now abandon it, the bright days of England's glory will set in the night of her disgrace.

But, I would fain believe that such is not to be our fate. Our Fore-fathers made stern grim-visaged PREROGATIVE hide his head: they broke in pieces his sharp and massy sword. And, shall we, their Sons, be afraid to enter the lists with undefined PRIVILEGE, assuming the powers of Prerogative?

I shall be told, perhaps, that there is not much danger of this power being *very frequently* exercised. The same apology may be made for the exercise of any power, whatever. I do not suppose that the Gentlemen of the House of Commons will send any of you to jail, when you do

not displease them. Mr. Yorke did not move for the sending of Mr. Jones to jail, until Mr. Jones displeased him; but, it is not a very great compliment to pay to any Constitution, to say, that it does not permit a man to be imprisoned, unless he has done something to displease persons in power. It would be difficult, I should suppose, to find any man upon earth, however despotic his disposition, who would not be contented with the power of sending to prison, during his pleasure, every one who should dare to do any thing to displease him. Besides, when I am told, that there is little danger that the Gentlemen in the House of Commons will *often* exercise this power, I cannot help observing, that, though the examples may be few, their effect will, naturally, be great and general. At this moment, it is true, we see but one man actually in jail for having displeased those Gentlemen; but the fate of this one man (as is the effect of all punishments) will deter others from expressing their opinions of the conduct of those who have had the power to punish him. And, moreover, it is in the nature of all power, and especially of assumed and undefined power, to increase as it advances in age; and, as Magna Charta and the Law of the Land have not been sufficient to protect Mr. Jones; as we have seen him sent to jail for having described the conduct of one of the members as an *outrage upon public feeling*, what security have we, unless this power of

Imprisonment be given up, that we shall not see other men sent to jail for stating their opinion respecting Rotten Boroughs, respecting Placemen and Pensioners sitting in the House; or, in short, for making any declaration, giving any opinion, stating any fact, betraying any feeling, whether by writing, by word of mouth, or by gesture, which may displease any of the Gentlemen assembled in St. Stephen's Chapel?

Then, again, as to the *kind* of punishment; why should they stop at sending persons to jail? If they can send whom they please to jail; if they can keep the persons, so sent, in jail as long as they please; if they can set their prisoners free at the end of the first hour, or keep them confined for seven years: if, in short, their absolute Will is to have the force of Law, what security can you have, that they will stop at *Imprisonment*? If they have the absolute power of imprisoning and releasing, why may they not send their prisoners to York-Jail as well as to a jail in London? Why not confine men in solitary cells, or load them with chains and bolts? They have not gone these lengths yet; but, what is there to restrain them, if they are to be the sole judges of the extent of their own powers, and if they are to exercise those powers without any controul, and without leaving the parties, whom they choose to punish, any mode of appeal, any means of redress?

That a Power such as this should exist in any country it is lamentable to be obliged to believe; but, that it should be suffered to exist, and that its existence should be openly and even boastfully avowed, in a country, whose chief glory has been its free constitution of government, is something too monstrous to be believed, if the proof were not before our eyes. Had the least doubt hung upon my mind of the illegality of the proceedings in the present case, it would have been altogether removed by the answers given to the references made by me to the Great Luminaries of our Law and to the Laws themselves. The Argument, by which I endeavoured to convince the Gentlemen of the House of Commons, that their acts, in the case of Mr. Jones, were illegal, I shall now lay before you, in a more full and connected way than it could possibly be done by the Parliamentary Reporters; and, in doing this, I shall do all that now remains in my power towards the correction of this, as I deem it, most enormous Abuse of Power, and most dangerous of all encroachments upon the Rights and Liberties of Englishmen.

I remain, Gentlemen,

Your most obedient,

humble Servant,

FRANCIS BURDETT.

Piccadilly, March 23, 1810.

THE
ARGUMENT, &c.

IN order to make clearly understood the Argument which is here submitted to the consideration of the Public, it will be necessary, first, simply to state the question about to be discussed, as it was proposed originally to the House of Commons, and to endeavour to put out of view altogether, as making no part of the present enquiry, every other Privilege or Power for which the House of Commons may contend. I am the more anxious upon this point, on account of the difficulty experienced during the discussion in the House of Commons of keeping separate, things, in their nature totally dissimilar, and quite distinct, but always confounded: namely, The other Privileges and Powers contended for by the House of Commons, and that which we are now about to discuss; namely, "*The Power exercised by the House of Commons of passing a Sentence of Imprisonment on any person not being a Member of that House.*" It will be necessary to keep our minds constantly fixed upon this simple question alone, and to apply to it, and to it only, all the arguments about to be adduced in the course of this enquiry.

Had I not been prevented by indisposition from being present when the House of Commons passed by vote a Sentence of Imprisonment on Mr. Gale Jones, I should have endeavoured to shew, That under the false notion of Privilege, they were exercising a power, and committing an act of oppression, ill suited to the character of Guardians of Public Liberty, and destructive of the first and most important object of the Constitution, viz. "The Personal Security of the Subject."

Though I was well aware of the greater difficulty of persuading men to recall an act once committed, than to prevent its commission—it being much more easy to slide into than to recover from error—I would not allow that consideration to deter me from what my duty called upon me to attempt. To others I shall always leave fanciful ideas, suggested by wild metaphysical imaginations, on the supposed nature of what they may be pleased to call Privilege, or any other chimerical, undefined non-descript; and, as a plain man, be content, upon this as upon all other occasions, to be guided by the old Laws of the Land; in which alone I am able to find THE CONSTITUTION of this Country—the Liberty which I claim as the inheritance of Englishmen—and that Standard by which and by which alone, every act and proceeding of any man or body of men ought to be measured.

The Common Law of the Land is the inalienable inheritance of the people—it is, says Lord Coke, "The Inheritance of Inheritances; it is the best birth-right the Subject hath, for thereby his goods, lands, wife, children, his body, life, honour and estimation are protected from injury and wrong. *Major hæreditas venit unicuique nostrum a jure et legibus quam a parentibus.* It is highest above the highest: None are

“above its reach, nor any beneath its protection: Its foundations are laid broad and deep in nature and reason, and therefore not to be removed from those foundations by any power upon earth *.” “The Law of England,” says the great Lawyer Plowden, “is no other than pure and tried reason †.” And, according to Lord Coke, “the absolute perfection of Reason. The ground whereof is beyond the memory or register of any beginnings ‡.”

The question, then, for the People to consider, is, Whether a Vote of the House of Commons can deprive them of these their imprescriptible Rights?

Many are the statutes, which, embodying these principles of the Common Law, have declared, That no Order, Writ or Commandment whatsoever, either from the King or any other, shall stop the Common Law: That it shall by no means be delayed, being the surest sanctuary for the innocent, and the strongest fortress to protect the weak. It has clipt the wings of high-flying prerogative; and will, I trust, yet dissolve the potent spell of undefined Privilege of Parliament: for there are no Powers or Privileges, even the highest, that are not bounded by the known ascertained Laws of the Land. If, therefore, any man, or set of men, lay claim to Privileges or Powers, not recognized by, but repugnant to, those Laws; such claims ought to be legally resisted by every one who values regulated Liberty, and abhors Anarchy or Despotism—the never-failing consequence of departing therefrom.

* See also Co. Lit. 141. a. 2 Inst. 56, 63.

† Plowden, 316.

‡ See also Co. Lit. 976, 2 Inst. 179.

Founded on such a basis; fortified by such Authorities as I shall have occasion to appeal to in the progress of this enquiry, I have little doubt of being able to convince every impartial mind, that the House of Commons, by proceeding to judgment—passing a Sentence of Imprisonment, and issuing a Warrant of Commitment, has gone beyond its prescribed limits, acted in a manner inconsistent with the ends of its institution; and violated the fundamental principles of the Law and Constitution of the Land. And this I shall prove by the application of the standard of the law to the Proceedings of that House.

To bring this question fairly into discussion, it will be necessary to state the origin and extent, from which will appear the nature and reason, of the Privileges of members of Parliament.

The first mention of Privilege of Parliament is to be found in Spellman, who records a law of king Canute, “*Omnis homo cundo ad Gemotum, vel redundo á Gemoto habeat pacem.*” That every one going to, or coming from the Wittena gemotte, should have protection.”

The next notice of Privileges is to be found in two Writs of Superfedeas of Edward the second, to privilege members from being sued in any court, (sitting the parliament) and which are still extant.

The extent of these Privileges cannot be better set forth than in the following Order of the House of Commons, of the 1st of June, 1621, supposed to have been drawn up by sir Edward Coke, then a leading member of the House:

“Ordered, upon question, That if any Arrest, or any distress of goods, serving any process, summoning his land, citation or summoning his person, arresting his person, suing him in any court, or breaking any other

“ privilege of this House, a letter shall issue, under Mr. Speaker’s hand, for the party’s relief therein, as if the parliament was sitting; and the party, refusing to obey it, to be censured at the next Access.” *

On the 18th of December, 1621, the following Protestation concerning the Privileges of the House of Commons, was agreed to, and ordered to be entered in the Journal :

“ The Commons, now assembled in parliament being justly occasioned thereunto, concerning sundry Liberties, Franchises, Privileges, and Jurisdictions of Parliament, amongst others not herein-mentioned, do make this Protestation following : That the Liberties, Franchises, Privileges and Jurisdictions of Parliament, are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, State, and the Defence of the Realm, and of the Church of England, and the making and maintenance of laws, and redress of mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament : and that in the handling and proceeding of those businesses every member of the house hath, and of right ought to have, Freedom of Speech, to propound, treat, reason and bring to conclusion the same : that the Commons in parliament have like liberty and freedom to treat of those matters, in such order, as, in their judgments shall seem fittest : and that every such member of the said house hath like freedom from all impeachment, imprisonment and molestation (other than by the censure of the house itself), for, or concerning any bill, speaking, reasoning or de-

“ claring of any matter or matters, touching the parlia-
 “ ment or parliament business ; and that, if any of the
 “ said members be complained of, and *questioned* for any
 “ thing said or done in parliament, the same is to be
 “ shewed to the king, by the advice and assent of all the
 “ Commons assembled in parliament, before the king
 “ give credence to any private information.” *

The nature and reason of these Privileges are declared by a Resolution of the House of Lords, May 28th, 1624. On which day, the Earl Marshal, from the Committee for searching Precedents to sustain the Privileges, &c. of the House, made the following Report : viz.

“ How far the Privileges of the Nobility do clearly
 “ extend, concerning the Freedom of their Servants
 “ and followers from Arrests.

“ To all their menial servants and those of their fa-
 “ mily, and also those employed, necessarily and pro-
 “ perly, about their estates as well as their persons.—
 “ This freedom to continue twenty days before and after
 “ every session ; in which time the Lords may conve-
 “ niently go home to their houses in the most remote
 “ parts of the kingdom.—That all the Lords, after the
 “ end of this session, be very careful in this point, and,
 “ remember the ground of this Privilege ; which was,
 “ only, in regard they should not be distracted, by the
 “ trouble of their servants, from attending the serious af-
 “ fairs of the kingdom ; that therefore they will not per-
 “ vert that Privilege to the public injustice of the king-
 “ dom, which was given them, chiefly, that the whole
 “ realm might, in this High Court, draw the clear light
 “ of justice from them. In which case, every one ought

* 1 Cobbett's Parl. Hist. 1361.

“ rather to keep *far within*, than any way exceed their
 “ due limits.—That hereafter, before any person be sent
 “ for in this kind, the lord whom he serves shall, either
 “ by himself or by his letter, or by some message, certify
 “ the house upon his honour, that the person arrested is
 “ within the limits of the privilege before expressed.—
 “ And, for the particulars, they must be left to the judg-
 “ ment of the House, as the case shall come in question ;
 “ wherein the House wants no means, as well by oath as
 “ without, to find out the true nature of the servant’s
 “ quality in his lord’s service. Thereupon, if it be ad-
 “ judged by the House contrary to the true intent, any
 “ member whatsoever must not think it strange, if in such
 “ a case, both himself suffer reproof, as the House shall
 “ think fit, and his servant receive no benefit by the pri-
 “ vilege, but pay the fees; because the justice of the
 “ kingdom must be preferred before any personal ref-
 “ pect, and none to be spared that shall offend after so
 “ fair a warning.—Ordered to be observed accordingly,
 “ with this alteration, viz. This freedom to begin with
 “ the date of the writ of summons, and to continue
 “ twenty days after every session of parliament *.”

We may reasonably conclude, that all the Privileges,
 the House of Commons then thought itself intitled to,
 were enumerated in the Order of the 1st of June 1621,
 as sir Edward Coke, so well acquainted with, and then
 contending for them against the undue prerogative of the
 crown, claimed no more.

Whenever these Privileges, so modestly and reason-
 ably claimed, and so necessarily complied with, were in-

* 1 Cobbett’s Parl. Hist. 1483.

fringed, they were as modestly and reasonably maintained by an appeal to the tribunal of the Laws : which is apparent by reference to all the Cases of Privilege which occurred up to the time of the Civil War. As for instance :

In 1427, one Richard Chedder, a menial servant, attending upon sir Thomas Brooke one of the knights for Somersetshire, who was assaulted, beaten, and cruelly maimed, was content to seek redress by law *.

In 1430, William Larke, servant to William Mildred one of the members for the City of London, was committed to the Fleet on an execution of debt, and delivered in due course of law †.

And in 1433, an act of parliament was made, affixing a heavier penalty for the assaulting a member, than the law had previously inflicted. The act is entitled “An Act against assaults made upon Lords or others coming to the parliament.”

In 1456, Thorpe, the Speaker, was arrested at the suit of the duke of York, on which the Commons appealed to the whole parliament, who referred the case to the Judges, whose opinion was in favour of Thorpe’s being entitled to privilege : notwithstanding which, the Parliament decided otherways, and the Commons acquiesced and chose another Speaker ‡. What is remarkable in this case is, that both the Judges and the Parliament appeal to the same maxim : both apply the same argument as conclusive, viz. “That the party aggrieved could have no redress, and that there could be no wrong without a remedy.” The Judges determine from this maxim and from this reason, that no general Writ of *Superfedeas* could lye, “because” (say they,) “if it could, the High Court

* 1 Hatsell, 14. † Ibid. 17. ‡ Ibid. 28. 1 Cobbett’s Parl. Hist. 392.

of Parliament from which all justice and equity ought to flow, would seem to stop the course of justice, and leave the party aggrieved without remedy." And the Parliament yield to this same reason set forth by the duke of York in the argument against Thorpe's being allowed Privilege, viz. "That in case it was granted to Thorpe in this instance, the party aggrieved could have no remedy." So that we have the Opinion of the Judges and the Decision of the Parliament equally determined by the never failing maxim, "That there can be no Wrong without a Remedy."

In 1461, Walter Clarke, a Member arrested, was relieved by law *.

In 1472, John Walshe, servant to the Earl of Essex, being sued in the courts below, pleaded Privilege not to be sued, as being servant to a member of parliament: but the Judges decided that there was no such Privilege †.

In 1543, in the case of George Ferrers, who was arrested, and who, as well as being a member of parliament, was servant to the king—*on which account*, the Commons seem to have proceeded in a different manner, by sending the Serjeant at Arms *for the first time*, to relieve their member. This was resisted by the Sheriffs with violence, the Serjeant had his mace broke, and returned without the member; whereupon the Sheriffs, were summoned before King, Lords and Commons, who referred their punishment to the latter, who sent them to jail ‡.

In 1545, Trewynnard, a member, was arrested and relieved according to law by writ of Privilege; for obeying which, the Sheriff sustained an action for escape ||.

Another case in the reign of Henry the 8th is very re-

* 1 Hatsell, 35. † Ibid. 41. ‡ Ibid. 53. 1 Cobbett's Parl. Hist. 553. || 1 Hatsell, 59.

markable, namely, that of Mr. Stroud a member; who for bringing a bill into parliament for regulating the Tinners in Cornwall, was upon the breaking up of parliament *questioned* for it in the Court of Stannaries—fined and imprisoned in Lilford Castle; but relieved by due course of law, by Writ of Privilege*.

In 1580, the singular and complicated Case of Mr. Hall, a member, occurs, who having written a Book derogatory to the character of the House, and having published the same against its Orders, and misrepresented its Proceedings; and having besides written an impudent Letter to the Speaker, and being absent when ordered to attend in his place, was imprisoned †.

In all these Cases we may observe that Members, when their Privileges were violated, and their Persons arrested, were content to appeal to the Law, and had that tenderness and respect for other men's Rights as well as their own Privileges, as to make provision for the interest of creditors, when affected by their Privileges, and to indemnify officers against actions for escape, to which they were legally liable for giving up their prisoners. And never did the Members of the House of Commons presume to overleap the bounds of the Constitution, and take the law into their own hands, till the days of the Long Parliament; when, from the peculiar circumstances of the country, in order to resist the arbitrary encroachments of a despotic Prince, the House of Commons found it absolutely necessary in the struggle, not only to extend their Privileges, but to assume powers, the exercise of which abolished the House of Lords, brought the King to the block, and ultimately dissolved the whole frame of the Government. If these usurpations of Power were not

* 1 Hatsell, 86. 126. 206. † Ibid. 93.

only acquiesced in, but strenuously supported by the People, it was because they were supposed to be indispensibly necessary to enable the House of Commons to stem the torrent of tyranny which was sweeping every thing before it to destruction; and as the only means of wresting from the grasp of despotism, the expiring Liberties of the country.

But these, surely, are not sources sufficiently clear, nor times sufficiently analogous to justify our drawing thence instances, miscalled Precedents, to countenance similar proceedings under a legal, settled, and established system of government. But as every day's experience will inform us how reluctantly all men relinquish power and authority, which they have once exercised, even after having experienced its mischiefs, so was the House of Commons after the Restoration unwilling to yield up its usurped power and authority, submitted to in times of trouble and commotion, but incompatible with the return of order and the laws.

Accordingly, we find in the Cases of Dr. Carey, Mr. Fitten, sir Samuel Barnardiston, Shirley, and Stoughton *versus* Onslow, the pretensions to Power under the name of Privilege still clung to by both Houses of Parliament, but as constantly denied and resisted by each House in its turn; the one always denying the usurpation of the other, and the parties aggrieved the authority of both: consequently no power or authority is acknowledged or allowed to belong to either. But the following Case, which occurred about the same time, and which having been argued at a Conference between the two Houses is entitled to more particular notice, is that of the four Council in the Appeal of sir Nicholas Crispe *versus* the lady Bowyer, Dalmahoy and others, who were taken into the custody of the Ser-

jeant at Arms, for pleading before the Lords, contrary to an Order of the House of Commons to forbid them; at which Conference, the Lords assert, That the House of Commons is no Court, has no authority to administer an Oath, or to give a Judgment; that it is a transcendant invasion of the Liberty of the Subject; that it is against Magna Charta, the Petition of Right, and many other laws, which have provided, That no freeman shall be imprisoned, or otherwise restrained of his liberty, but by due process of law; that it tends to the subversion of the government of the kingdom, because it is in the nature of an Injunction from the Lower House; which has no authority or power of jurisdiction over *inferior subjects*, much less over the King and Lords*: Which arguments not to be controverted, the House of Commons contented itself with replying to, by retorts upon the assumed jurisdiction of the House of Lords, and by advancing empty assertions of its own authority, without attempting to offer a shadow of proof in their support.

But in the Case of sir Samuel Barnardiston before mentioned, it is curious to observe the two Houses changing sides. The House of Commons then becomes, in its turn, the advocate for Magna Charta and the Rights of the People against the usurping jurisdiction and arbitrary pretensions of the House of Lords. Each House deciding as equitably against the unjust pretensions of the other, and according to the laws and the interest of the public; and as regardless of all equity, the public interest and the laws, when taking upon it to decide in its own cause; thus affording a strong additional illustration of the old wholesome doctrine, "That no one ought to be judge in his own cause."

From this period to that of the Revolution, the first instance that occurs, is that of a Pamphlet on clipping and coining guineas. The House of Commons offered a reward for the discovery of the author, and ordered the Pamphlet to be burned.

The next case that occurs, is that of Dr. Welwood, who published a weekly paper, reflecting upon the whole House. He was reprimanded and discharged. *

Complaint being made against a Book entitled "King William and Queen Mary Conquerors," said to be written by Charles Blount, esq., it was ordered to be burnt: as likewise was a Pastoral Letter at the same time †. Dyer, a News-paper man, was reprimanded for publishing Debates, and discharged. ‡

Having briefly noticed these important Cases, I shall next proceed to direct the public attention to the remarkable Case of Bridgeman *versus* Holt * in 1696-7. The ducheſs of Grafton having claimed under a patent of Charles the second, a right to appoint the Clerk to the King's Bench, Lord Chief Justice Holt contested the claim. It was a trial at bar, and was decided against the Ducheſs in favour of Lord Chief Justice Holt. Upon which, the counsel of Bridgeman, who had been nominated as Clerk by the Ducheſs, tendered a Bill of Exceptions, which the Justices refused to seal. In consequence of which, a Petition, complaining of the conduct of the Judges, was presented to the House of Lords, accusing sir Wm. Dolben, sir Wm. Gregory, and sir Giles Eyre, Justices of the King's Bench, of acting illegally in having

* 5 Cobbett's Parl. Hist. 658.

† Ibid. 756.

‡ Ibid. 862.

§ Showers's Cases in Parl. 111.

so refused. They were, in consequence of this Charge, summoned by the House of Lords to appear before them, and answer to the complaint made in the Petition. Which the Judges refused to do : and they, in a solemn, well-digested Argument, denied the Jurisdiction of the House of Lords, and insisted upon their undoubted Right, as Englishmen, to a Trial by a Jury of their equals, in case they, in anything were accused of having done wrong, and claimed the benefit of being tried according to the known course of the Common Law : they relied upon Magna Charta as free born Englishmen, which, they said, was made for them as well as for others ; that all Powers and Privileges in the kingdom, even the highest, are circumscribed by the laws, and have their limits. In the Courts of Westminster, (said they) the Law is determined by one, and the Fact ascertained by another ; *here*, both the Law and the Fact would be in the same hands. If the House of Lords should punish, could such order stop or bar the legal process hereafter ? or be used below as a recovery or acquittal ?—as an *autrefois convict* ? or *autrefois acquit* ? Would the Proceedings in the House of Lords save them from the trouble of answering to an information or indictment *for the same thing* elsewhere ?

Here it is to be remarked, that when the Judges of the land were attacked by an unwarrantable power, they sheltered themselves behind the broad shield of Magna Charta and the Trial by Jury, well knowing the value of such a protection—and they conclude with these memorable words : “ Some persons have, perhaps, from a diffidence
 “ of success, or from a slavish fear, or private policy, for-
 “ borne to question the power of their superiors, but the
 “ Judges must betray their reputation, and their know-
 “ ledge of the laws, if they should own a jurisdiction

“ which former times and their predecessors were unacquainted with.” Whereupon, the Petition was dismissed.

If these reasons were conclusive against the jurisdiction of the House of Lords, they apply much more forcibly to the House of Commons : for the House of Lords retains the judicial authority of the parliament, being a Court of Appeal ; but, the House of Commons has no judicial function to perform, and is no court at all. The Judges claimed no more than their right as commoners of England in Magna Charta and the Common Law of the land ; which they contended, and with success, admitted of no man’s being tried, except by a jury of his equals. They affirmed, that all Powers and Privileges in the kingdom, even the highest, are circumscribed by the laws of the land, and that they, the Judges, should betray a slavish fear and gross ignorance, if they permitted such an usurpation to be drawn into a precedent unknown to former times.

These arguments, which need no further comment, ought to have been sufficient to put an end to all such pretensions in either house of parliament for ever ; but so reluctantly do all men part with power, that we find the Lords in the very next year, 1697, in the Case of Lord Banbury, summoning Lord Chief Justice Holt, to appear before a Committee of their House ; but Lord Chief Justice Holt refused to appear, and the Lords listened to the voice of reason, and dropped their pretensions.

From these solemn acts of venerable Judges in good times, it is evident, that undefined Privileges in the Houses of Parliament were unknown to the Constitution and the

Law; though, sometimes, perhaps, yielded to from ignorance or fear, but in which the Judges who knew the laws would not acquiesce.

This sound exposition of the Law, and the conduct and example of the Judges, might reasonably have been expected to operate as a prevention of any further dissuade of an English subject from the power of either house of parliament: and that it did produce a considerable effect, we may presume from the number of subsequent Cases, in which neither House presumed to trench upon the Liberty of the Subject. For instance: in the year,

1698. Molyneux's "State of Ireland." He refused to appear, and the House of Commons addressed the King to discontinue the like Works in future.

1699. Mr. Chivers, a member, was ordered to attend for a contempt; but declined coming: and, next day, on its being put to the vote, Whether he should be taken into custody by the Serjeant at Arms? it was carried in the negative.

1702. Doctor Drake's "History of the last Parliament," a libel.

1707. Doctor Friend's "Account of Lord Peterborough's Conduct in Spain," a libel.

1719. Hall's "Sober Reply,"—a work against the Trinity.

1750. "Constitutional Queries."

1763. Wilkes's "Essay on Woman," to which the name of Bishop Warburton was prefixed as the author.

1763. Wilkes's "North Briton, No. 45."

1763. Veni Creator paraphrased.

In all of which Cases, whether for libelling any mem-

ber of either house, or the whole house, or both houses, or the whole frame of the government, both Lords and Commons were content to pursue the known course of the Law, and left the party accused to be tried by the law of the land and a jury of his country.

There is a Case which, though prior in point of time, I have reserved for the last, because it demands a few observations: That of the Kentish Petition* in 1701, presented to the House of Commons by Mr. Colepepper and four other Kentish Gentlemen: voted by the house libellous, seditious, and a breach of privilege, and for presenting which the House of Commons sentenced these five gentlemen to be imprisoned. Is this an act to be justified and drawn into precedent? And of what avail is any precedent from the proceedings of an assembly whose conduct is arbitrary, and whose actions are measured by the crooked cord of its own discretion, not by the golden meteyard of the law?

The next and the last Case I shall have occasion to adduce, is that of the Middlesex Journal, in 1771, when the Serjeant at Arms of the House of Commons was sent by their order to arrest the Printer; instead of which, the Printer took up the Serjeant, and brought him before Crosby, Lord Mayor, and Aldermen Wilkes and Oliver, who committed the Serjeant. Notwithstanding this outrage which the House of Commons sustained by the attack upon its officer, it presumed not to touch any of the offending parties, except its own members, the Lord Mayor and Alderman Oliver; passing over the Printer, the Journalist, and Alderman Wilkes, who, at that time,

* 5 Cobbett's Parl. Hist. 1520. See also "The History of the Kentish Petition," in the Appendix to the same volume, No. XVII.

was not a member of the House—than which disaffirmance of its power a stronger proof cannot be conceived.

Lest it should be possible that any person should attach the slightest importance to the Resolutions of either House of Parliament, which may go to affect those who are not members of those bodies, it may be necessary to remark, that the Journals furnish Resolutions of the most contradictory nature: for instance,

April 3, 1626-7, Resolved, “ That the Writ of Habeas Corpus cannot be denied, but ought to be granted to every man, that is committed or detained in prison, or otherwise restrained, by the command of the king, the privy-council, or any other; he praying the same*.”

June 9, 1705, Resolved, *nem. con.* “ That no commoner of England, committed by Order or Warrant of the House of Commons, for breach of privilege, or contempt of that House, ought without order of that House to be, by any Writ of Habeas Corpus, or other authority whatsoever, made to appear and answer, and do, and receive a determination in the House of Peers, during the session of parliament wherein such person was committed†.”

And, in 1740, in Walpole’s Case, it was resolved by the Lords, “ That any attempt to punish a man without a trial or hearing, was contrary to the natural principles of Justice and Liberty.” And, in the Case of Skinner *versus* the East India Company, in 1675, the Commons Resolved, “ That assuming a jurisdiction over the Case, being relievable at common law, is con-

* 2 Cobbett’s Parl. Hist. 259.

† 6 Cobbett’s Parl. Hist. 431.

“ contrary to law, and tends to introduce arbitrary power.”
 —But, to Resolutions of the House of Commons, Sir Fletcher Norton said, when Attorney General, (and he was afterwards selected, for his knowledge of the laws, usage, and custom of parliament, to fill the Chair),
 “ He would pay no more respect, than to the Resolutions of so many drunken porters at an ale-house.”
 The expression was coarse, but the principle is just.

It has been shewn, from the Opinions of learned Judges—from the Declaration of both Houses of Parliament, when not judging in their own cause,—and from undeniable legal Maxims, that the power exercised by the House of Commons, of passing a Sentence of Imprisonment upon any person, not a member of its body, is contrary to the Common Law, to Magna Charta, and every constitutional principle. I will now go further, and undertake to prove, that not only every fundamental principle of the Common Law has been violated, but that every express provision of the Statute Law, for the personal security of the subject, has been transgressed. For which purpose it will be necessary to examine strictly, and with the utmost precision, what the legal and constitutional functions of the House of Commons are: supposing, for the sake of the argument, that they are the fairly chosen Representatives of the People. Its Privileges we have enumerated from the highest authority. Let us now consider its Powers—begging that the Reader will never lose sight of the wide distinction between Privilege and Power.

Its Powers, then, briefly are: To remove Obstructions to its Proceedings: to abate a Nuisance legally called Contempt: As the Grand Inquest of the nation (which very term is enough to shew that its office is but to in-

quire, not to punish), it has authority to summon Witnesses for the purpose of instituting Inquiries into Public Grievances—of controuling Public Expenditure, and of impeaching Public Delinquents, in furtherance of justice, with a view to Judgment at the Tribunal of the Laws.

Such being its Powers, it will be necessary, in the next place, to examine it in another point of view, viz. as a Court exercising judicial Powers. And here, at the outset, we discover, that it is not a Court of Record, because it cannot hold Plea of Debt or Damage to the amount of forty shillings. Lord Coke says, “ That a Court *not* of “ Record, is where it cannot hold Plea of Debt or Damage to the amount of forty shillings;” and he expressly lays it down, “ That no Court not of Record can “ fine or imprison,” as resolved *per totam curiam*, on argument in Griesley’s Case, as well as by Holt, in the Case of Grenville, *versus* Barwell. To impose a Fine of the lowest denomination the House of Commons has relinquished its former pretensions. If it does not, then, presume to impose the smallest Fine, does it not necessarily follow, that it cannot inflict the higher punishment of Imprisonment? It is an acknowledged maxim in Law : “ *Cui minus non convenit, ei non majus convenit* ;” and, of how much more value, in the eye of Reason and the Law, is a man’s Person, than his Property, though it protects both? To what end, indeed, should a man acquire Property, if his Person is insecure? The notion entertained by our old lawyers, respecting Imprisonment, which is the highest execution of the law short of death; the importance attached by them to the power of imprisoning men, may be collected from Lord Coke, who says, “ That a man in prison is dead in law; he is *homo mortuus*, lost to society, himself, his family, and his friends;

and that a man indefinitely imprisoned, is a man in Hell." And the Gospel says, "Is not the Life more than meat and the Body than raiment?" in which word "raiment" all external possessions are included.

This part of the subject may be reduced to a Syllogism :—

No Court, that cannot hold Plea of Debt or Damage to the amount of forty shillings, is a Court of Record :

The House of Commons can hold no such Plea ;

Therefore is not a Court of Record—therefore cannot fine or imprison.

We will now try this pretension of the House of Commons by the test of its own proceedings.

The party is summoned to the bar to answer interrogatories. Should he be unwilling to do this, he is sent to prison.—See the Case of Mr. Howard, 1675*. Should he confess, he is likewise sent to prison. See the Case of Mr. Jones, 1810. No legal evidence can be brought. The House is stopped *in limine* ; for it cannot administer an oath ; and Magna Charta, who, says my Lord Coke, is such a fellow, that he will bear no equal—arrests its further progress—declaring, "That no man shall be put to his law on the bare suggestion of another, but by lawful witnesses." Therefore, the House cannot proceed to trial : consequently, can deliver no Judgment—can pass no Sentence. Magna Charta declares, "That no Freeman shall be arrested, imprisoned, or in any way destroyed, but by the Judgment of his Peers, or the Law of the Land;" and these words, *per legem*

† 4 Cobbett's Parl. Hist. 770.

terra, or law of the land, are well and fully explained by the Statutes in confirmation of Magna Charta. The 5th, 25th, 28th, 37th, and 42d of Edward the 3d: which declare, That no man shall be put to answer without presentment of good and lawful men, before Justices, or matter of record, or writ original, or in due process of law. They also declare, That all enactments contrary to Magna Charta, are, *ipso facto*, null and void. And hereupon, says Lord Coke, all Commissions are grounded, always having this Sentence, "*Faciuri quod ad justitiam pertinet, secundum legem et consuetudinem Angliæ.*" It is not, says Lord Coke, "*Secundum legem et consuetudinem Regis Angliæ,*" lest it should be thought to bind the King only. Nor is it, "*Secundum legem et consuetudinem Populi Angliæ,*" lest it may be thought to bind the People only;—but *per legem terræ id est Angliæ*, that the law may extend to all.

Empson and Dudley committed grievous oppressions under cover of an act of Henry the 7th; which shews the danger of shaking this fundamental law, by delegating discretionary powers to Justices of the Peace or others, without trial by twelve lawful men. To repeal which, the 1st of Henry the 8th was enacted, and "to deter," says the Act, "others by their fearful end, from similar courses, and to admonish future Parliaments, that instead of this ordinary and precious Trial *per legem terræ*, they bring not in absolute and partial trials by discretion." It is worthy of remark, that Empson and Dudley were hanged, for going contrary to Magna Charta, notwithstanding that they acted under the authority of an Act of Parliament; and, above all, we should lay to heart, that warning given to future Parliaments, not to take away the precious Trial by Jury, and not to intro-

ance discretionary jurisdiction contrary to Magna Charta and the Common law*.

Yet, limited and circumscribed as the House of Commons is—having no means of trial—no rules of judicial proceeding—being no Court of Record—not presuming to fine—not competent to administer an oath—nevertheless, it takes upon itself; first, to determine the crime *ex post facto*: secondly, it calls upon the accused, to criminate himself, contrary to every principle of English law: and in this extrajudicial manner upon a man criminating himself (so far as avowing himself the author of what has not been proved to be a crime, can be called criminating himself) the House proceeds to Judgment, and investing itself with all the powers of Grand Jury, Petty Jury, Accuser, Judge and Executioner, without evidence, without trial, it pronounces a Sentence of indefinite imprisonment, and this in its own cause—where, least of all, it should take upon itself to decide.

Let us next examine these proceedings by the rules of the Law, and again recur to that grand expounder of the Law, Lord Coke; who says, 1st Inst. sec. 3d.—“ No man
“ can be arrested or imprisoned contrary to the form of
“ the Great Charter.” 2d Inst. 46, 3d Inst. 209—“ No
“ person is to be imprisoned, but as the law directs, either
“ by command, or order of a Court of Record, or by
“ lawful warrant, by which one may be detained law-
“ fully to answer the law.”

Every oppression under the colour of authority is a kind of destruction; and Magna Charta says, “ No man
“ *aliquo modo destruatur.*” Every oppression tends to destruction: but that is the worst oppression which is

* See 1 Cobbett's State Trials, No. 26.

done under colour of Justice. Edward the 6th incorporated St. Albans with power to make Ordinances : They made a Bye-law with a penalty of imprisonment. This was adjudged void—because contrary to Magna Charta—because “ *Nullus liber homo capiatur.*” No freeman shall be imprisoned, &c. On the same account, a Commission under the Great Seal to arrest a notorious Felon, was resolved to be against Magna Charta—because no man shall be brought to answer—not being indicted or appealed by the party or other process of law. By the 2d of Henry 4th it is enacted, “ If any man be arrested or imprisoned against the form of the Great Charter that he be brought to his Answer and have right.”

These are some of the numerous Provisions for the safety of the people, arising out of the Common and recognized by the Statute Law. These are the glorious Privileges of Englishmen ; their imprescriptible, inalienable Liberties : “ claimed, insisted upon and demanded” by the Bill of Rights, and sealed and sanctified by the blood of their forefathers :

“ At once the pride and safeguard of the land.”

Shall these Bulwarks, that have withstood the pelting storms of the Prerogative of the Crown, be sapped and undermined by the creeping Privilege of Parliament ? Yet, will this be the case, if the House of Commons be permitted to usurp a Power never pretended to by our most arbitrary kings.— But no ! the Laws, Cases, and Authorities, before cited, are positive : They make no reservation of Privilege of Parliament ; much less of Power of the House of Commons ; but on the contrary, are conclusive against both.

Let us now try, by another touchstone, this Power exercised by the House of Commons.

It is an acknowledged maxim in Law, That there can be no Wrong without a Remedy. When Edward the Fourth asked Chief Justice Markham; If he could not arrest a man? “No,” said the honest Chief Justice, “Your Majesty cannot arrest any man even for treason; because the party, if aggrieved, could have no remedy; but if he was arrested by any officer of your Majesty, he could have his action for false imprisonment.” This unanswerable argument is equally applicable to the House of Commons.

To whom does it hold itself accountable?

Against whom or what can a party aggrieved bring his action?

Where look for redress?

Here is an argument, which our old lawyers considered as conclusive to any point: as may be seen in all their pleadings, It is the legal, “*reductio ad absurdum*,”—a failure of justice, which neither Law nor Reason will endure.

What the Duties, Privileges, and Powers of the House of Commons are, have been already shewn. In contemplating the Constitution of this country, which will appear more admirable, the more closely it is viewed, and the more minutely it is investigated, we should be careful not to confound its parts: to bear in mind that the House of Commons is not the High Court of Parliament—that Parliament consists of three Estates—the King—the Upper—and the Lower House—That each of these has its own peculiar functions, and that no one separately has any power except over its own Members. Certainly not to bind the Subject. It is universally admitted by all writers upon the science of Government, that the legis-

lative, executive, and judicial powers in a state should be kept distinct; that the monster Despotism is generated by their union; and that Justice and Liberty are promoted and assured by these powers being kept separate and distinct. Accordingly, the Laws of England keep not only the great outlines, but every part of each feature distinct. The great outlines are, The King entrusted with the execution of the Laws; yet cannot the King execute any law; but he is bound to delegate his authority to officers of the law. Why?—because, if it were otherwise; if a subject was injured, he could have no redress. There would be a wrong without a remedy; which the law will not endure. The King can do no wrong: that is, the King can do no act, but by the prescribed forms of the law: Somebody or other must, consequently, be answerable for it.—When the Petition of Right was presented to Charles the First, the House of Commons would not accept of the King's Answer, though yielding to their wishes, because it was not couched in the precise and formal phrase of the law: they, therefore addressed the King for a more full, explicit, and satisfactory Answer. Nor were they contented, until the King coming down to the House of Commons told them, “He had an answer now to give, he was sure would please them;” and accordingly, when they again presented the Petition—he returned the desired Answer in the precise legal form, “*Soit droit fait comme il est desire*,” with which they were satisfied*.

As the Legislative is kept distinct from the Executive, so is the judicial from each and both. An English court of law is an object worthy the contemplation of every mind that delights in Justice. So is every step of consti-

* 2 Cobbett's Parl. Hist. 409.

tutional legal proceeding. Is any person accused of having committed an offence, information upon oath must be given before a sworn magistrate, who is authorised to admit him to bail, or commit him to prison according to the nature of the Offence. In which last case, the warrant must clearly set forth the charge, and must have a lawful conclusion; that is, that the party shall be detained to answer the law, or till delivered by due course and process of law. The sworn Information before a sworn magistrate, is transmitted by him to the Clerk of the Crown to be put into the form of an Indictment, which is laid before a Grand Jury of 23 equals of the accused, who find, or *ignore*, the bill. In the first case, he is put upon his trial, when, according to the sworn evidence before given, the witnesses confronted with the accused, twelve men on their oaths ascertain the fact, and the Judge upon his oath determines the law: should the party be acquitted he can never be troubled again for the same offence, he can plead his *autrefois acquit* from the records of the court; which will be a bar to further proceedings against him. Should he be convicted, he is committed by a warrant in execution issuing from the lawful authority, to hear and *determine* causes—stating the offence, and concluding, that the party be safely kept, till delivered by due course of law. Should he be molested again on the same charge, he can plead his *autrefois convict*—which stops all further annoyance.

In these wise and cautious proceedings, no one party can take any two successive steps: The Jury ascertains the Fact; the Judge applies the Law; the Sheriff executes the Sentence. Such is the guarded practice of the law. Yet, notwithstanding all these wise provisions and regulations, does the House of Commons, only one, and the

lowest branch of the Legislature, take to itself the functions and powers of the whole Legislative, Executive, and Judicial. Skipping over all intermediate steps, over-leaping all the constitutional boundaries, they jump at once from accusation to punishment—the highest, short of death, that can be inflicted—Imprisonment; and illegal, because indefinite.

The Speaker of the House of Commons will, no doubt, be able to shew an example, which may be erroneously termed a Precedent, of a Warrant similar to that by which Mr. Jones has been committed to Newgate. He will, no doubt, be able to point out the time when such Warrants were issued; but, it must be observed, that it is as strongly marked with the stamp of illegality, as every other part of the proceeding: in fact, it wants every ingredient of a lawful Warrant: it neither issues from lawful authority, nor contains lawful cause, nor has a lawful conclusion. Of this, the case above quoted of the illegal Warrant, under the Great Seal, for the apprehension of the notorious felon; the act of the 2nd of Henry the 4th; 2nd Institute, 46; and 3rd Institute, 209, are in proof. Should any more be wanting, the 1st Roll. Rep. 337, may be added; which says, “If a Warrant of Commitment be for imprisoning a man till further order, *it hath been held ill*; for it should be, until the party be delivered by due courte of Law.”

Having now stated the mode adopted by the House of Commons in asserting its right to avenge itself, for what it is pleased to call a breach of its Privileges, when the authorities which have been adduced are considered with that attention to which they are so eminently intitled, it cannot be thought presumptuous to say, That each and all of these proceedings are contrary to the Common

Law, to Magna Charta, the Petition of Right, the Act of Habeas Corpus, the Bill of Rights, the basis of the Revolution, the compact between King and People; the Act of Settlement, the condition by which the King holds his Crown; and the numerous Statutes which have provided for the Liberty of the Subject:—That by so doing, instead of claiming, modestly and necessarily, the *Privilege* of wearing a shield to protect themselves against the prerogative of the Crown, or any other annoyance, that may actually obstruct them in the discharge of their duty to and for the People, the House of Commons has assumed the *Power* of using a sword against the Liberties of that People; those Liberties which they are bound, in a peculiar manner, to maintain and defend:—That, by proceeding thus, they have exercised a jurisdiction not vested in them; a jurisdiction beyond the limits of King, Lords, and Commons, whilst Magna Charta remains unrepealed; and repealed it can never be, till England shall have found her grave in the corruption of a House of Commons:—That, by this act, they confound the Legislative, Executive, and Judicial functions, which the Constitution has wisely ordained shall always be kept separate and distinct.

Being but one and the inferior branch of the Legislature, it has shot beyond its due limits; not a tendril only (an exuberance instantly to be lopped), but pushed forth its arms till they over-top the other trees of the forest; rendering all beneath its shade, and within the reach of its influence, noxious and unwholesome.

They have done a Wrong without a Remedy; and have put a subject out of the Protection of the Law, by dooming him to indefinite imprisonment without bail, or mainprize—prevented from his Writ of Habeas Corpus,

and debarred of all redress.—Thus subjecting the Liberties of the People to a capricious Vote and discretionary Resolution of the Lower House of Parliament.

Hitherto this question has been argued on its own merits, from the general principles of the Common Law, and positive provisions of the Statutes, all concurring on the same point, the assurance of the personal Liberty of the Subject, which is not to be restrained but by virtue of a warrant issuing from lawful authority, grounded on an information upon oath.

Of Lawful Warrants there are three sorts :

1st. A Warrant of Apprehension ; in which must be recited the deposition upon oath, and which must conclude with an order, to bring the offender before some magistrate, “ to be further dealt with according to law.”

2dly. A Warrant of Commitment ; the offence not being bailable, which must set out particularly, the sworn deposition of the informant, and must conclude legally, with a mandate to the jailor to detain his prisoner, “ to answer the law.”

3dly. A Warrant in Execution after the party has been found guilty, by a Jury of his equals. Which must contain a copy of the record of conviction and of the Judgment ; must set out precisely the Sentence to be executed according to Law, and conclude with an injunction to keep the convicted person in safe custody, till he shall be delivered by course of Law : that is, till the expiration of the definite Sentence.

It is now proposed to apply all the Arguments, Cases, and Authorities referred to in the progress of this enquiry, to the case of Mr. Jones individually, from an anxious wish to have the subject considered in every point of view. The practice of the Courts of Law authorized

to take cognizance of offences and to inflict punishments, has been traced through every step ; it now remains to contrast this legal practice with the proceedings of the House of Commons.

John Gale Jones having (according to the words of the Speaker's Warrant), written and caused to be printed, " A certain Paper containing libellous reflections on the character and conduct of the House of Commons, and of some of the members thereof," (viz., Mr. Yorke and Mr. Windham), the former gentleman, not being in the habit, perhaps of reflecting, that the known laws of his country would give him ample redress if he had sustained any wrong, complained of what he fancifully called a Breach of Privilege, which he as whimsically grounded on the Bill of Rights. Whereupon, Mr. Gale Jones having been brought before the House and acknowledged himself the author, was *adjudged*, according to the Speaker's Warrant, (or rather prejudged) *guilty* of a gross libel, and sentenced to be imprisoned during pleasure.

Let us apply the Rules of the Law and Arguments of the Judges before stated, to the case of Mr. Jones.

1st. The proceedings are upon bare suggestion, contrary to Magna Charta.

2dly. Mr. Jones is called upon to criminate himself, contrary to common sense, and every principle of the law.

3dly. The House of Commons ascertain the fact without Evidence, being incapable of administering an oath.

4thly. They previously determine the guilt without appealing to any law.

5thly. They deliver Judgment without Trial.

6thly. They pass a Sentence of indefinite Imprisonment, contrary to law.

7thly. The Speaker issues a Warrant of Commitment illegal in the gross, and in all its ingredients—no lawful

authority—no lawful cause—no lawful conclusion—and wanting that essential stamp of law, a Seal of Office. That the public may exercise its own judgment, however, the Warrant is here set forth.

“ *Mercurii 21^o die Februarii, 1810.*

“ Whereas the House of Commons hath this day *ad-
“ judged*, that John Gale Jones, having written and
“ caused to be printed a certain Paper containing *libellous*
“ reflections, on the character and conduct of the said
“ House and of some of the Members thereof, is thereby
“ *guilty* of a high breach of the Privileges of the said
“ House. And whereas, the said House hath thereupon
“ *ordered*, That the said John Gale Jones be for his said
“ offence committed to his Majesty’s Gaol of Newgate :
“ These are therefore to require you the Keeper of his
“ Majesty’s Gaol of Newgate, to receive into your cus-
“ tody the body of the said John Gale Jones, and him
“ safely to keep in your custody, *during the pleasure* of
“ the said House ; for which this shall be your sufficient
“ Warrant.—Given under my Hand this 21st day of
“ February, 1810,

CHARLES ABBOT, SPEAKER.”

“ *To the Keeper of his Majesty’s*

“ *Gaol of Newgate.*”

Let this Instrument—this thing *sui generis*—be contrasted with the description above given of the properties of a lawful warrant. Does it not evidently appear, that this piece of unsealed paper signed by the Speaker, by which an untried subject has been outlawed, bears no feature of Legality ? And that from the commencement of this proceeding—in its progress and to its conclusion—there is not one step that has not been marked in a peculiar

manner with disrespect for the laws—a disrespect in which all the parts have been wonderfully consistent throughout, in constituting the most unlawful act the mind of man can possibly conceive.

Let the case of Mr. Jones now be measured by the Arguments of the Judges before cited : which Arguments were held by the House of Lords as conclusive against its pretensions.

The Judges claimed and insisted upon the benefit of the Common Law, Magna Charta, and Trial by Jury, *for any thing* in which they might have done wrong ; not because they were Judges, but because they were commoners of England. They denied and rejected the jurisdiction of the Lords, and assigned their reasons : “ Be-
 “ cause, in that case, the fact would be ascertained, and
 “ the law would be determined by the same party, and
 “ that if they should be punished by the Lords, that would
 “ not prevent their being called to answer again in the
 “ Courts of Westminster hall, where they could not
 “ plead an *autrefois convict*, or *autrefois acquit* : and so,
 “ they might be punished twice for the same offence.”

Let us apply this reasoning to the case before us : It hath been shewn, that the Common Law, Magna Charta, and Trial by Jury have been violated. We find Mr. Jones imprisoned for an act, the illegality of which has not been proved—the facts, not ascertained—nor the law determined. Yet is he now undergoing such a Sentence as hath been shewn. And, as to the other part of the Argument of the Judges : what is to prevent Mr. Yorke from preferring a Bill of Indictment, according to law, against Mr. Jones for this same act : And if we can suppose, that any twelve *lawful* men in England could be had to find a verdict of Guilty, then would he be punished twice for the same offence ? He could not prove his former con-

viſtion, becauſe he could not produce the record of his former Sentence ; becauſe, the Houſe of Commons is no Court of Record, therefore incapable, by law, to furniſh a copy of the record ; becauſe the law does not allow that Houſe *to try and determine* any cauſe. To determine is beyond its limits, as hath been ſhewn : its incapacity is clearly proved by the legal circumscription of its powers.

We will next ſuppoſe that a Jury can find no injury to have been ſuſtained by Mr. Yorke, and ſhould return a verdict of Acquittal : then will Mr. Jones have been ſentenced to undergo the moſt ſevere puniſhment ſhort of death, that of indefinite imprisonment, by an Order of the Houſe of Commons, for having done an act not proved to be a crime ; on the contrary, which will have been determined by a Jury of his equals, not to have been an offence, as in the caſe of Reeves ; with whom the miniſter dealt more tenderly by giving him, his creature, the benefit of the law ; when a Jury contradicted by their legal verdict the predetermined Judgment of the Houſe of Commons ; but, if a Jury were to do the ſame in the preſent caſe, Mr. Jones could have no remedy for the wrong done to him—he cannot bring his action for falſe imprisonment againſt Mr. Yorke, nor againſt the Houſe of Commons, nor the Serjeant at Arms, nor the Sheriffs, nor the Jailor : that is to ſay, if the Courts of Law ſhould tell him, as they have told others heretofore, that they could not interfere with the Houſe of Commons.

Anxious to have this Caſe thoroughly conſidered, and to leave no loop to hang a doubt on as to the true character of the Proceedings of the Houſe of Commons, we will ſuppoſe it may be ſaid, that Mr. Yorke took this method, by calling out Breach of Privilege, of puniſhing Mr. Jones, as the act was not properly cognizable by a Court

of Law. To this is to be replied, in the first place, That if an act is not cognizable in a Court of Law, no offence has been committed : because, an Englishman is at liberty to do every thing, not forbidden by the law. But, a fact has occurred, that proves that Mr. Yorke, if aggrieved, had his remedy by due course and process of law : as a legal Bill of Indictment has been preferred by another member of the House of Commons (lord Castlereagh) against Mr. Jones, as the author of a Placard of a similar nature (inviting discussion) and found by the Grand Jury : And, in the event of Mr. Jones's being convicted by law, there is nothing to prevent lord Castlereagh from complaining of a Breach of Privilege after Mr. Jones has undergone the limited sentence of the law, and getting him sentenced by the House of Commons to unlimited imprisonment for the same offence. Mr. Jones cannot plead his *autrefois convict*, though he may procure the record from the Court of Law where he was convicted. The House of Commons will not receive it ; so that he may be punished, once by a Vote of the House of Commons contrary to law, and by Bill of Indictment according to law—and again,—by Bill of Indictment by the law, and by Vote of the House of Commons against all law, all for the same offence, for the legal and probable duration of the life of man.

The Speaker's Warrant (if it can be called by such a name) which has been set out at length, commits Mr. Jones “ during the pleasure of the House of Commons.” It has been shewn, that a lawful warrant should issue from lawful authority—should assign lawful cause, and should have a lawful conclusion. A Speaker of the House of Commons is no Legal Magistrate—his Warrant assigns libel—is not libel bailable ? But it may be pretended,

that the Culprit has been tried and condemned—This is a Warrant in execution.—A Warrant in execution by a Speaker of the House of Commons on a sentence of imprisonment!!! for a month—or six months—or a year—or seven years—or for a day—or an hour!——Let not the people think that this statement is incorrect, because that the facts stated are nearly incredible. The House of Commons, that does not pretend to a right of committing any person for custody, even one hour—yet insist upon and exercise the power of passing a sentence of imprisonment, during the pleasure of the House! Not to be “delivered by due course of law,” nor to “answer any law.” For what law is he to answer? for what offence committed? Or, is the alleged offence of so heinous a nature as to preclude the supposed offender from bail? By what law can he be delivered? To what law can he appeal? What is the term of his confinement?

“During the *pleasure of the House of Commons.*”

Here is an Englishman outlawed; put out of the protection of the King’s law by order of the House of Commons, who are peculiarly bound to protect and defend the Liberty of the Subject.—The House of Commons, which is no court; which cannot fine; which the law forbids to pass any Judgment; which cannot administer an oath; which cannot take any one step according to law, for the best of all reasons, because the law recognizes no such Court, nor allows it any such power, as passing a definitive sentence.

But, it is truly admirable, how consistently the House of Commons has acted throughout the whole of this Case, always measuring its proceedings by the line of its own discretion, instead of the golden meteyard of the

Law—a principle, which if once admitted—admitted!! if not reprobated, and resisted, the inevitable consequence will be, the total subversion of all Law and Order. For what makes the distinction between a state of Liberty and a state of Slavery, but being guided and protected by known laws common to all, or being subject to variable, arbitrary, and uncertain discretion. “*Misera servitus est, ubi jus est vagum, aut incognitum.*” Wretched is the Slavery of him who lives under uncertain laws!

If the Judges of the Laws of England in the days of lord Holt, thought so justly, and acted so firmly and decidedly in their case, so have we witnessed in our time, how acutely a learned Judge of the Civil Law, sir William Scott, can feel, when even a presumed injurious suspicion is thrown out, though no punishment has been inflicted upon him without trial or a fair defence. And here it is impossible to avoid remarking, how tender-skinned some men are upon being touched themselves! how susceptible their feelings! how tremblingly alive to the slightest annoyance! The learned Civilian felt nothing for poor Jones, sent to jail without trial, without an opportunity of making his defence. His own words will best express his feelings on the occasion alluded to, which was on a charge brought forward in the House of Commons by lord Cochrane, my most worthy colleague, against the Court where the learned Civilian presides; when he said:

“ That the accusation was brought forward against the
 “ Court where he presided, when there was no possibility
 “ of a defence, and thus allowed to impend for many
 “ months over the head of the court, which could not
 “ demand its trial, and of course could not ward off a

" most painful and depreciating suspicion; this was a
 " mode of proceeding which could not be sufficiently
 " deprecated, nor too severely reprov'd. It was placing
 " a man in the situation of a supposed culprit, in whom
 " every guilt was likely to be presumed, and from whose
 " society every innocent man was ready to fly, abandoned by society, cut off, and in a manner excommunicated, he might in the end appear completely guiltless, and prove by his acquittal, that his only misfortune was not being allowed, in time, an opportunity of defence. Notwithstanding the cruelty of this, many men were to be found anxious to bring forward an unfounded accusation, and the world, in general, was but too prone to its reception. He deplored the custom, and deprecated its continuance; and he did so the more earnestly, feeling acutely its injustice in his own case."—And, in these feelings the House of Commons sympathized.

He complains in the style of the Civil Law of being excommunicated. Mr. Jones remonstrates in the language of the Law of England against being outlawed, without having been found legally guilty of any crime.

The Roman Satirist, when lashing the vices of a corrupt country, particularly upbraids the absence of feeling, generally, exhibited for the sufferings of small men in humble stations. The poor man may lose his goods and all his effects. Should his house be burned to the ground, no one troubles himself about it. But, if misfortune touches the great, then, all partake of the general sorrow:

" Magna Arturii cecidit domus, &c.

" Tunc gemimus casus urbis; tunc odimus ignem."

Poor Codrus excites no sympathy :

“ But if the palace of Arturius burn,
The nobles change their clothes, the matrons mourn;
The City Prætor will no pleadings hear;
The very name of fire, we hate and fear;
And look aghast, as if the Gauls were here.”

From the conviction on my mind of the justness of the sentiments here expressed by the learned Judge; and from as well weighed and fully digested an opinion as my researches enabled me to make, and my reason instructed me to form, I proposed in the House of Commons :
“ That Mr. Gale Jones should be then discharged.”

In opposition to these arguments, it was, in the first place, relied on, That this power of Commitment had been exercised for three hundred years. In support of which assertion, only two instances were adduced. One of Ferrars, a member and servant to the king, before cited ; and one Mornington, who beat Mr. Johnson a member, and pleaded ignorance of his being a member of the House of Commons*. But of what importance are these two Cases ? For their own acts, were they ever so numerous, can never be admitted as Precedents to establish their own claims. Sir Thomas Bromley, Chancellor in the reign of Elizabeth, denied that their own acts could be cited as Precedents, when they were insisted on by a Committee of the House as proofs in support of their claim to a privilege of not being liable to be subpœnaed in Chancery. Sir Thomas Bromley said, that unless those precedents had been confirmed by the Court of Chancery, they were of no avail † ; and all Lawyers know that a legal precedent is established by a

* 1 Hatsell, 53, 74.

† Ibid. 96.

decision of all the Judges, on an Argument at Bar. Nothing can be more mischievous or more calculated to mislead, than to use legal terms in a popular sense; and though the word Precedent in popular language means any thing that went before; yet, in a strict legal sense it means a Decision upon Argument, one of which is worth a thousand without.

From Custom or Usage such a claim never can be set up; for a custom to obtain must be reasonable in itself; must have been used from time immemorial; must be *pro bono publico*—not contrary to law, and never contested.

From Common Law it cannot be derived; because at common law, a man could not be imprisoned in any case, unless for force or violence—for which his body was subject to imprisonment, as one of the highest executions of the law. And, that it is forbidden by all the Statutes, it is to be hoped has been sufficiently proved. Therefore, unless it can be shewn, that an Order of the House of Commons can contravene all these Authorities, there can be no pretence on which this usurpation can be maintained. And to talk of the Law of Parliament as contradistinguished from and contradictory to the Acts of Parliament!—It is a phantom fitter to be entertained by the fancy of a Bedlamite than by a Lawgiver.

Notwithstanding the care that has been taken in the progress of this enquiry to keep legal words from being used in a popular sense, and to prevent a confusion of ideas arising therefrom, it will be necessary in this case to adopt the mode which has been invariably pursued, and to define correctly the legal meaning of the term about to be discussed. For, by not attending sufficiently to this distinction, much embarrassment was created during the former discussion of this subject in the House of Com-

mons: few persons having been able to keep sufficiently separate, things, in their nature so essentially different, as the power of Commitment for a legal Contempt, (or abatement of a Nuisance), and the passing of a Sentence of Imprisonment as a punishment for an offence.

Every one knows that in popular phrase a man is said to shew contempt for another if he turn upon his heel and do not answer a salute: but, in a legal sense, Contempt has one meaning, and one only—that is, obstruction to the proceedings of a Court, which every Court is necessarily competent to remove. “Contempt is a disobedience to the rules and orders of a Court. One may be punished for a contempt in Court, but not out, or a private abuse.”* Whether the Case of the Incorporation of St. Albans, which has been accurately stated, and the Arguments of the Judges in *Bridgeman versus Holt*, are or are not applicable to the case before us, must be left to the candid consideration of the Reader.—It is necessary to observe, that I lay no stress upon the *authority* of the Judges merely as such, recollecting full well the many Opinions of Judges contrary to the Law of the Land and subversive of the Liberty of the Subject. In the case of *Ship Money*, the Judges determined, that the King had a right to levy taxes without consent of the Representatives of the People. In the famous Case of the *Habeas Corpus*, in the King’s Bench, afterwards reversed, the Judges determined, that when the King committed, the Subject could have no relief. When Charles the First imprisoned Members of Parliament for their parliamentary conduct, the Judges determined, that the Act of the fourth of Henry the Eighth was a private Act, tho’ made expressly to pre-

* See Crook, Eliz. 649.

went members from being questioned, in consequence of Mr. Stroud having been questioned in the Court of Star-chambers, and fined and imprisoned by that Court, on account of a Bill he had introduced into the House of Commons for regulating the Tinnerns in Cornwall. Therefore, it is not upon the authority, but upon the weight of the arguments above cited, and honest arguments they were, of unfeeling Counsel in their own cause, that we rely.

As for Modern Decisions of such men as De Gray, Mansfield, or Kenyon, they will hardly be worth quoting on either side of the question; and, for an illustration of the conduct of the last mentioned Judge upon this great constitutional question, I beg leave to refer the Reader to the Case of Benjamin Flower, and to the able Argument of Mr. Clifford in that case; to which Argument I embrace this opportunity of acknowledging myself greatly indebted; and so in my opinion, are the public at large.

In pursuing this Argument, the Reader should carefully keep in mind the marked distinction there is between Privilege and Power. No Privilege of the House of Commons is here denied. But, it may be asked, Upon what ground or pretence they assume a Power to punish? Since they have taken upon themselves to exercise this Power, it is fair to call upon them to shew how they came by it, and when they first claimed it*.

* Sir Robert Walpole seems to have entertained the same sentiments, as appears from his Speech in the House of Commons, in the Case of Sir Richard Steele, in 1714: "Why," said he, "should the author be answerable in parliament for the things which he wrote in his private capacity? And if he is punishable by law, why is he not left to the law? By this mode of proceeding, parliament, which used to be the scourge only of evil ministers, is made by ministers the

The commencement of this Ufurpation was when they got rid of the Upper House of Parliament, and cut off the head of the King. They still, it seems, are emboldened to retain an illegal power not pretended to even by the King. But which these local sovereigns over the King, claim as of right. But no wonder, when they have so entirely departed from the ends of their institution—as was offered to be proved by Mr. Madocks, and acknowledged by themselves, in the never-to-be-forgotten morning of the 11th of May, one thousand eight hundred and nine; when, from being the Lower or Inferior (for it is the same sense, one being an English, the other a Latin word), Branch of the Legislature, they have become the proprietors, by burgage tenure, of the whole Representation; and, in that capacity, inflated with their high blown fanciful ideas of majesty, and tricked out in the trappings of royalty, think Privilege and Protection beneath their dignity, assume the Sword of Prerogative, and lord it equally over the King and the People*.

“ scourge of the subject. In former reigns, the audacity of
 “ corruption extended itself only to judges and juries; the at-
 “ tempt so to degrade parliament was, till the present period,
 “ unheard of. The Liberty of the Press is unrestrained; how
 “ then shall a part of the legislature dare to punish that as a
 “ crime which is not declared to be so by any law, framed by
 “ the whole! And why should that House be made the instru-
 “ ment of such a detestable purpose.” See Coxe’s Walpole, vol. 1, p. 73. See also 6 Cobbett’s Parl. Hist. 1269.

* Upon this memorable Debate, Mr. Ponsonby, Lord Chancellor of Ireland, under the Whig Administration, observed, “ That he could not consent to proceed against individuals, because that had been proved to exist, which had long been as notorious as the Sun at noon-day; namely,

But, in order that nothing may be wanting, to render truly ludicrous every part of this proceeding, which, inverting the laws of the drama, as well as all other laws, begins with a Farce and ends with a Tragedy, the House of Commons imprison Mr. Jones—under the sanction of what law think ye?—THE BILL OF RIGHTS!!!—Well might Paine call it the Bill of Wrongs; if it could be thus converted into an instrument to oppress and to destroy the Liberties of the People, those Liberties which it was expressly framed, claimed, demanded and insisted upon to protect.

Mr. Yorke has discovered a new meaning in the Bill of Rights; and, because the Bill of Rights declares, That a member of parliament cannot be questioned any where out of parliament for words spoken therein, he has sapiently concluded, That the People are prohibited from exercising their understanding, for the purpose of discussing or censuring the conduct of the Gentlemen who sit in that House. These Gentlemen all concurred with him in the Sentence passed on Mr. Jones; though no one agreed with him in his new interpretation of the word “Question,” in the Bill of Rights—knowing, as they

“the Sale of Seats in that House.” See Cobbett’s Debates, vol. xiv. p. 519.

And in a Committee of the whole House, on the 1st of June last, upon Mr. Curwen’s Reform Bill, the Speaker made use of these expressions: “The question now before us, is no less than this: Whether the Seats in this House shall be henceforth publicly saleable?—A proposition, at the sound of which, our ancestors would have startled with indignation; but a practice, which, in these days, and within these walls, in utter oblivion of every former maxim and feeling of Parliament, has been avowed and justified.” See p. 837 of the same Volume.

did, that "questioned," legally, means accused before a tribunal competent to punish; and that the power intended to be counteracted was the King's Prerogative and the arbitrary proceedings of the Court of Star Chamber, which were in the constant habit of questioning and punishing Members, for their conduct in the House, as in the Case of Mr. Strode before mentioned, and of Strickland, Sir John Eliot, Col. Churchill, Holles, Valentine, and many others. And, surely, that cannot be deemed a Privilege of Parliament which is incompatible with the Rights of the People: as the Lords resolved in the Case of Ashby and White: "That declaring Ashby guilty of a Breach of Privilege of the House of Commons is an unprecedented attempt upon the jurisdiction of parliament; and is, in effect, to subject the law of England to the Votes of the House of Commons *"—And how much more so is this act of imprisoning Mr. Jones!

But the House, it seems, thinks that its *dignity* is concerned in continuing Mr. Jones in prison. That dignity should consist in punishing is a novel idea. The dignity of any man or body of men is best maintained by their doing their duty, according to their several stations. If dignity consisted in punishing, then would Jack Ketch be the most dignified man in the land †. But the Commons do not sit in that house for their dignity, but as Servants

* 6 Cobbett's Parl. Hist. 431.

† Lord Clarendon observes, "That the damage and mischief cannot be expressed, that the Crown and State sustained by the deserved reproach and infamy that attended the Judges by being made use of in this and like acts of power, there being no possibility to preserve the dignity, reverence, and estimation of the laws themselves, but by the integrity and innocency of the judges."

of the People; not to exercise Prerogative and Power over them, but to inspect and controul the Public Accounts, to protect Liberty and Property; to complain of exorbitances of Power in any quarter; and to maintain the Laws of the Land. They are the last persons who ought to set an example of encroachment. If they become destroyers of the Liberties of the People, in them, oppression is combined with treachery; they destroy where they are bound to protect. Every reason is as strong against such an act, from them towards the People, as it was against Macbeth in the murder of Duncan.

“ He is here in double trust,
 “ First as I am his subject and his kinsman—
 “ Both strong against the deed—then as his host
 “ Who should against his murderer shut the door,
 “ Not bear the knife myself.”

HAVING now arrived at a conclusion of the Argument upon this most interesting and important case, one cannot, in taking leave of the subject; in reviewing the whole of the proceeding complained of; in beholding an assembly whose sole business it is to make laws, and to watch over the due execution of the laws already made; one cannot, with such impressions in one's mind, help entertaining a fear, that the Gentlemen of the House of Commons, may in time, unless they revert to the Great Principles of the Constitution, be in danger of incurring the sentence of St. Paul upon the insolent and tyrannical High Priest, who had commanded him to be stricken for

opening his mouth in his own defence :—" God shall
" smite thee, thou whited wall : For fitteſt thou to judge
" me after the Law, and commandeſt me to be ſmitten
" contrary to the Law ?"



